



IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76-641

P. C. PFEIFFER CO., INC. and
TEXAS EMPLOYERS' INSURANCE ASSOCIATION,
Petitioners

v.

DIVERSION FORD and DIRECTOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
Respondents

AYERS STEAMSHIP COMPANY and
TEXAS EMPLOYERS' INSURANCE ASSOCIATION,
Petitioners

v.

WILL BRYANT and DIRECTOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
Respondents

**REPLY TO THE MEMORANDUM
OF THE SOLICITOR GENERAL REGARDING A
PETITION FOR WRITS OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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The Solicitor General of the United States has suggested that any decision regarding grant of a writ of certiorari in these two cases be held in abeyance pending the Court's decision in the *Caputo* (No. 76-444) and *Blundo* (No.

76-454) cases. This Court has granted a writ to the Court of Appeals for the Second Circuit in *Caputo* and *Blundo* in order to consider the question of the shoreward extent of federal jurisdiction under the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act, and *Caputo* and *Blundo* present that question in the context of cargo operations and classifications in the New York City area. The captioned cases present the question of shoreside jurisdiction under the Longshoremen's Act in the context of working conditions and classifications at the ports of Beaumont and Galveston, Texas. These cases are typical of the western Gulf of Mexico area and indeed of much of the country, but, as recognized by the Solicitor General (Memorandum, p. 2), differ in certain factual respects regarding patterns of individual employment from the *Caputo* case now before the Court. As acknowledged by the Solicitor General, a decision in *Caputo* may not resolve the present cases or the general class of cases of which they are representative.

Petitioners respectfully urge that this Court should grant the writ of certiorari to consider the captioned cases in addition to or concurrently with the *Caputo* and *Blundo* cases for the following reasons:

1. The nationwide applicability of the Longshoremen's Act dictates that the Court should consider this important question of statutory interpretation in a context broader than that of a single port area.
2. The factual variances to which the Court's decision will be applied should be focused for the Court by considering several cases in order to avoid reliance

on what might prove to be a factual anomaly in deciding a case of potentially great precedential significance.

3. Petitioners respectfully urge that this Court's pre-amendment Longshoremen's Act jurisprudence is relevant and significant to the question of statutory interpretation presented by these various cases, but this significance has not been advanced by the applications filed in the *Caputo* and *Blundo* cases. The captioned cases should be considered by the Court in addition to *Caputo* and *Blundo* in order to insure that the pertinence of this jurisprudence is urged to the Court.*
4. The captioned cases are before the Court in a timely manner and no significant delay need occur if these cases are considered in conjunction with the *Caputo* and *Blundo* cases. Petitioners will abbreviate their briefing schedule to thirty days or such other period selected by the Court in order to enhance the timeliness of these cases.
5. The opinion of the court below adopts the expansive government position on the jurisdiction question perhaps more clearly than any of the other

* A brief amicus curiae raising this legal issue has been submitted to this Court in *Caputo* and *Blundo* on behalf of the West Gulf Maritime Association, together with a motion for leave to file the brief. At the time this response is being prepared, the Court has not ruled on the motion for leave, and an opposition has been filed by the attorney for the warehousemen, *Caputo* and *Blundo*. The West Gulf Maritime Association is represented by the same counsel presently before the Court on behalf of the captioned petitioners, but even assuming the motion for leave will be granted, the position of amicus curiae may not afford the opportunity for argument or as full a presentation in the factual context of these cases as Petitioners will strive to present if the writs are granted.

Circuit Court cases which have reached this issue, and explicitly rejects the "point of rest" analysis of jurisdiction on a fully developed record. Thus these two cases present an excellent vehicle for the Court to deal with the "point of rest" analysis of maritime employment for Longshoremen's Act purposes in both the loading and unloading contexts.

6. The Solicitor General's footnote dismissal of Petitioners' subsidiary issues clearly misconceives the practical importance of these points, especially the fundamental question whether the Court must defer to the Benefits Review Board in matters of statutory interpretation and questions of law. There is a clear conflict among the circuits, and the differences are not trivial or semantic. Petition, pp. 33-35.
7. The Solicitor General correctly states that the statutory presumption, 33 U.S.C.A. §920(a), applies to "factual disputes" rather than questions of law as are present in these cases (Memorandum, at note 2). It is precisely the misapplication of the factual presumption to legal issues by the court below that Petitioners present as error in these cases and that requires relief by this Court.

For the foregoing reasons in addition to the substantive considerations urged in their Petition for Writ of Certiorari in the captioned cases, Petitioners respectfully pray

that this Court grant a writ of certiorari in these two cases and reverse the decisions of the court below.

Respectfully submitted,

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